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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions raised in the Limited Rehearing of Decision 08-09-042.

Investigation 15-11-007
(Filed November 5, 2015)

**RULING ON PENDING MOTIONS AND ISSUES DISCUSSED
AT JANUARY 20, 2016 PREHEARING CONFERENCE**

The above-captioned Order Instituting Investigation (I.) 15-11-007 (OII) was released and served on Respondents on or around November 12, 2015, opening an investigation into competition among telecommunications providers in California. Since then, parties have filed a number of motions questioning the timelines and procedures set out in the OII, the Commission's jurisdiction and authority to conduct this investigation, the correct categorization of the proceeding, and the perceived overbreadth and ambiguity of the Information Requests in the OII's Appendix B.¹ A prehearing conference (PHC) was held on

¹ Currently pending are the following Motions, roughly in the order they were received: AT&T and New Cingular's Request for Reconsideration of Categorization (originally filed as Request for Rehearing) (November 23, 2015); AT&T's Motion to Suspend Schedule until the Commission Conducts Workshops and an En Banc Hearing (December 9, 2015); Cellco Partnership (Verizon) Motion to Remove Verizon Wireless and Wireless Carriers as Respondents (December 15, 2015); Motion of CTIA for Modification of Procedural Schedule (extension of six months on Information Requests) (December 18, 2015); Motion by Cox California Telecom LLC on Behalf of its [Unnamed] Affiliated Entity to Modify List of Named Respondents (December 18, 2015); and Motion by AT&T California and New Cingular to Remove Certain Info Requests and Topics of Investigation (December 22, 2015).

January 20, 2016 to discuss the motions and related issues. This Ruling will address all of these motions and issues, except for the categorization request, which will be addressed in a separate ruling.

A. Procedural Motions

For the reasons discussed below, the following motions are denied: (1) the motions of AT&T and CTIA for a suspension and/or a six-month extension of the procedural schedule; (b) AT&T's motion for immediate workshops; (c) Verizon Wireless's motion to remove itself from the OII or in the alternative to suspend the schedule; and (d) Cox's Motion to remove its affiliated entity from the list of Respondents.

B. Jurisdictional Motions, and Questions Presented

1. Relevance

The jurisdictional motions confuse relevance with jurisdiction.² The two principal motions that raise subject matter jurisdiction or otherwise question the Commission's authority to investigate telecommunications competition in California are AT&T's Motion to Remove Information Requests or Topics of Investigation, and Cox's Motion on Behalf of its Affiliated Entity to Modify the List of Respondents. The URF decisions provide the frame of relevance.³ The Commission predicted that two factors -- FCC unbundling policies and intermodal (or "cross-platform") competition -- would drive sufficient future competition to discipline prices and obviate the need for traditional regulation:

² See, e.g., Cox's Motion, at 3 ("by improperly naming Unregulated Affiliates as Respondents, the Commission seeks information that is not relevant"), *passim*.

³ URF is an acronym for Uniform Regulatory Framework. See OII at note 3 (listing decisions), *passim*.

In summary, our analysis finds that the ubiquity of the FCC unbundling policies limits the market power of AT&T, Verizon, SureWest, and Frontier. Cross-platform competition, particularly that from wireless and VoIP technologies, provides an additional check that reduces market power of each carrier.⁴

The OII seeks to determine whether these and other competitive market forces are keeping services affordable and accessible for California consumers.

In URF I and URF II, the Commission stated it would remain “vigilant” in monitoring the development of the voice communications market.⁵ To carry out this pledge, the Commission found in URF I and II that it was necessary to continue to monitor the communications network as a whole.

2. Jurisdictionally Interstate Nature of Broadband, and Wholesale Inputs.

a. Broadband

AT&T, Cox, and others argue that broadband has been declared an interstate service, and as such, is beyond the Commission’s authority. *See, e.g., AT&T Motion to Remove Information Requests*, at 4, citing *Louisiana Public Serv. Comm’n v FCC*, a case in which the CPUC was a party, and which the U.S. Supreme Court decided in 1986.⁶ The 1996 Telecommunications Act (Act), however, changed the division of labor between state and federal regulatory

⁴ D.06-08-030 (URF I), Slip Op. at 133.

⁵ URF I, Finding of Fact 73 (“There is a need for the Commission to remain vigilant in monitoring the voice communications marketplace in order to ensure that the market continues to serve California consumers well”); D.08-09-042 (URF II), at 25 (“The Commission will continue to monitor the market to guard against abuses”).

⁶ *Louisiana Public Serv. Comm’n v FCC*, 476 US 355, 360 (1986).

authorities, and recognized state responsibility in monitoring and ensuring a competitive marketplace.

In its 1996 *Local Competition Order*, the FCC inaugurated national rules for enforcing and implementing local competition, finding that the Act “expands the applicability of both national rules to historically intrastate issues, and state rules to historically interstate issues.”⁷ The FCC found that in implementing the interconnection and unbundling aspects of the Telecommunications Act, “states should have the major responsibility for prescribing the specific terms and conditions that will lead to competition in local exchange markets” in a manner “consistent with the requirements” of the Act.⁸ The FCC noted that “it would make little sense in terms of economics or technology to distinguish between interstate and intrastate components for purposes of sections 251 and 252” of the Act.⁹

The reliance by AT&T and other parties on authority that pre-dates the 1996 Act is therefore largely misplaced for the simple reason that the 1996 Act changed the regulatory landscape to the one in which we find ourselves today. Perhaps recognizing this misplaced reliance on pre-1996 authority, the respondents also cite post-1996 authority for the proposition that both broadband and wholesale services have been completely federalized.

⁷ *In re Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (*Local Competition Order*) at ¶¶ 83-84; OII at n. 32, citing *Local Competition Order* at ¶¶ 1-2.

⁸ *Local Competition Order* at ¶¶ 41 and 103. See also *Core Communications, Inc. v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 335 (3d Cir. 2007) (“The ‘intended effect’ of such regime was to ‘leave state commissions free, where warranted, to reflect the policy choices made by their states’”).

⁹ *Local Competition Order* at ¶ 84.

Cox cites the FCC's 2015 *Open Internet Order*, for instance, to argue that broadband is "jurisdictionally interstate," and that the FCC will "preempt any state regulations which conflict with this comprehensive regulatory scheme or other federal law."¹⁰ But elsewhere in the *Open Internet Order*, the FCC affirms that states have a role in the broadband regulatory scheme.¹¹ Broadband, or broadband Internet access service (BIAS), is necessary to provide Voice over Internet Protocol (VoIP) service, one of the two intermodal competitors on which the Commission based its URF rulings, and thus is an important aspect of any analysis of competition in California.

More important, the Commission is not now proposing to adopt any new or additional regulations that might affect BIAS and thus be implicated by the FCC's *Open Internet Order*. Rather the Commission is gathering information. Nothing in the *Open Internet Order* bars state authority to gather information about the condition of the marketplace within its borders.

The California legislature specifically instructed the Commission "to encourage deployment of high-quality advanced communications services to all Californians" by creating the California Advanced Services Fund.¹²

¹⁰ Cox Motion, at 5, citing *In the Matter of Protecting and Promoting the Open Internet*, FCC 15-24, 30 FCC Rcd 5601 (February/March, 2015 (*Open Internet Order*) at ¶ 431.

¹¹ *Open Internet Order* at ¶ 276, n. 708, and ¶ 431, n. 1276 ("Notwithstanding the interstate nature of [broadband], states of course have a role with respect to broadband. . . . Given the specific federal recognition of a State role in broadband data collection, we anticipate that such State efforts will not necessarily be incompatible with the federal efforts or inevitably stand as an obstacle to the implementation of valid federal [policies]").

¹² Pub. Utils. Code § 281. Note also the states' responsibility for local telecommunications competition under federal law. See e.g. 47 U.S.C. §§ 251, 252.

Section 709 of the Public Utilities Code declares the telecommunications policies of the State of California to be, *inter alia*, “[t]o continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians,” “[t]o encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services,” and “[t]o remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.”

b. Wholesale inputs as interstate service

AT&T cites the 2003 Ninth Circuit decision in *Pacific Bell v. Pac-West Telecomm* to suggest that the field of “wholesale inputs” also is completely federalized, and beyond the Commission’s jurisdiction except when it comes to “arbitrating and approving (or rejecting) interconnection agreements under 47 U.S.C. § 252.”¹³ Even under AT&T’s reading of *Pacific Bell*, however, the “state commission [has] authority to regulate local telecommunications competition.”¹⁴

“Wholesale inputs” are relevant to the OII precisely because they affect and condition local telecommunications competition. While Commission

¹³ AT&T December 22, 2015 Motion at 6-7, citing *Pacific Bell v. Pac-West Telecomm*, 325 F.3d 1114, 1126 and n.10 (9th Cir. 2003).

¹⁴ While “the CPUC has limited jurisdiction to regulate interstate traffic” (325 F.3d at 1126) and the Ninth Circuit recognized that authority in the context of the arbitration and enforcement of §§ 251-252 interconnection agreements, we again observe that the OII does not seek to regulate interstate traffic.

authority to regulate those inputs is limited, the Commission may obtain data about those elements in order to inform its analysis of the condition of local telecommunications competition.

3. Commission Authority Regarding Affiliates

As discussed at the PHC, jurisdictional questions have been raised regarding the Commission's authority to gather data from VoIP or broadband affiliates of the certificated carriers listed in Ordering Paragraph 3 of the OII. Section 314 of the Public Utilities Code specifically extends the Commission's data gathering authority to utility subsidiaries and affiliates. It states in pertinent part:

(a) The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility.

(b) Subdivision (a) also applies to inspections of the accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in, an electrical, gas, or telephone corporation ... with respect to any transaction between the water, electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the water, electrical, gas, or telephone corporation.

Cox argues that section 314(b) is limited to data regarding "transactions" between utility and affiliate. But "transactions" in that context is quite broad, encompassing "any transaction ... on any matter that might adversely affect the interests of the ratepayers."¹⁵ In Resolution ALJ-195, the Commission affirmed

¹⁵ Pub. Util. Code § 314(b); *see also* January 20, 2016 PHC Transcript at 55.

that this statute¹⁶ authorized the Commission “to obtain information from non-regulated persons and entities.”¹⁷ In listing statutory provisions providing authority to obtain information, the Commission stated, “these provisions reflect the longstanding, broad, and settled authority granted by the People and the Legislature of California to obtain information from public utilities, and those who deal with them, in furtherance of informed public utility regulation”).¹⁸

Other sections of the Public Utilities Code provide further investigative authority to the Commission.¹⁹ Pub. Util. Code § 582, for instance, provides “[w]henever required by the commission, every public utility shall deliver to the commission copies of any or all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers and records in its possession or in any way relating to its property or affecting its business, and also a complete inventory of all its property in such form as the commission may direct.” (Emphasis added.)

Section 710(f) specifically reserves the “commission’s ability to continue to monitor and discuss VoIP services.” And section 710 (c)(4) preserves the “commission’s authority to require data and other information pursuant to Section 716.”²⁰

¹⁶ As well as Pub. Util. Code § 1794.

¹⁷ Res. ALJ 195 at 3.

¹⁸ *Id.* (emphasis added). *See also, e.g.,* Pub. Util. Code §§ 701, 1794.

¹⁹ Pub. Util. Code § 581 states, “[e]very public utility shall furnish to the commission in such form and detail as the commission prescribes all tabulations, computations, and all other information required by it to carry into effect any of the provisions of this part, and shall make specific answers to all questions submitted by the commission.”

²⁰ Pub. Util. Code § 710 (c)(4).

We note that section 710 only prohibits the exercise of “regulatory jurisdiction or control over [VoIP] and Internet Protocol enabled services except as required or expressly delegated by federal law or expressly directed to do so by statute or as set forth in subdivision (c).” We have already identified several statutory provisions, both state and federal, which make section 710 inapposite here. Further, several entities offering VoIP and Internet Protocol (IP) services are, in fact, certificated carriers that combine VoIP/IP and traditional TDM wireline services in dynamic, hybrid offerings.²¹

We are satisfied that we have multiple sources of authority to investigate the California telecommunications market as a whole, including the activities of VoIP carriers with certificated affiliates.²² We understand the phrase at the end of Ordering Paragraph 3 (after the list of certificated Respondents), “and any affiliate of those utilities providing Voice over Internet Protocol (VoIP, wireless, or broadband transmission service in California,” to express this authority, and the principle outlined above that a certificated carrier has a duty to provide all relevant information about a non-utility affiliate providing communications

²¹ See e.g., Caltel January 11, 2016 Comments on Information Requests, at 5; cf. *Global Naps v. CPUC*, 624 F.3d 1225, 1232, *passim* (9th Cir., 2010) (confirming CPUC jurisdiction over VoIP traffic delivered as intra-LATA calls).

²² See also *Younger v. Jensen*, 26 Cal. 3d 398, 405 (1980) (a department’s investigation may be “undertaken to inquire not only into the existence of violations but also into questions of California’s jurisdiction over them”); *Millan (Labor Secty) v Restaurant Enterprises Group*, 14 CA 4th 477, 487 (1993) (“An administrative agency has the authority to conduct an investigation and to subpoena records to determine whether the entity under investigation is subject to the agency’s jurisdiction and whether there have been violations of provisions over which the agency has jurisdiction”); see also, e.g., D.11-10-034, Appendix A, Rules for Affiliate Transactions (water & sewer companies) (regarding the use of regulated assets for non-tariffed utility services, and requiring the utility to produce affiliate books, records, and witnesses when necessary for Commission staff to perform its duties).

services. It does not otherwise subject utility affiliates to the jurisdiction of this Commission.

4. Information Requests

a. Timing

As stated at the PHC, we will defer Initial Responses until March 15, 2016, Final Responses until April 15, 2016, and also are providing a June 1, 2016 date for Supplemental Responses directed toward analyzing the data provided on March 15, 2016 and April 15, 2016.

As stated at the PHC, we will further defer responses to Information Requests 1, 4, 9, 10, 11, 12, 14, 15, 16, 19(a), 19(b) and 23 until the Supplemental Response, i.e., after parties have an opportunity to analyze data provided by others. For Information Request 14, please note that this deferral only applies to the prefatory question and not to subparts (a) through (e), which should be answered in the initial and/or final responses contemplated by the OII. For Information Request 19, the opposite is true: this deferral only applies to subparts (a) and (b), and not to the prefatory question (which can be answered in large part with reference to the spectrum information found on the FCC website, as set forth below).

Conversely, full responses to Information Requests 2-3, 5-7 (the Form 477 data referenced below), 8, 17-19, and 20-22 should be provided within the time frame set for Initial Responses. Full responses to the subparts of Requests 5-7, and Requests 14(a)-(e) shall be due on the date for Final Responses. As to Information Request 13, we invite the parties to submit Responses with their Initial or Final Responses, but require a Response from the Respondent carriers on or before the date set for Supplemental Responses.

b. Initial and “Final” Data Responses

Various parties, and Comcast in particular (its filings in response to the ALJ’s December 9, 2015 ruling) have asked as to the distinction between “Initial” and “Final” data responses (*see* OII at 17). The initial responses to the OII must include at least the information identified above, including the required copies of Form 477 data as requested in Information Request numbers 5-7. Parties are free to provide further information in initial responses, but may also wait until the deadline for final responses to complete data production. Consistent with Commission Rules and the Public Utilities Code, we expect Respondents to provide information in the possession, custody or control of the carrier or its affiliates after a diligent search and reasonable inquiry, including information available to their affiliate corporations and personnel.²³ As noted in the OII, parties lacking “precise data . . . should provide their best estimates, and identify what data would allow . . . a more precise estimate, and where that data might be found.”²⁴

c. Responses in the Form of Testimony

Comcast argues that “requiring respondents to prepare testimony is burdensome . . . and premature,” and other carriers echo this argument. We have concluded that the burden is not as great as carriers claim, but the requirement is also flexible. In practical terms, this provision of the OII requires that carriers identify the witness or witnesses most knowledgeable about each data response

²³ Cf. D.11-10-034, Appendix A, Rules for Affiliate Transactions, *supra*. The utilities have had since November 12, 2015 to begin the data collection process. The clarifications we make below do not fundamentally alter the data requested; the gist of the data requests has been clear now for over two months.

²⁴ OII, at 14-15.

that seeks raw data. Where a response to an Information Request represents analysis, however, responses in the form of traditional prepared testimony are appropriate.

d. Objections to the Production of Form 477 and Related Data

AT&T argues that FCC procedures are the only way for staff to get access to 477 reports, which contain “detailed” and “extremely granular” information,²⁵ and that the OII’s requirement that Form 477 reports be produced “conflicts with federal procedure.”²⁶ While it is true that the FCC has procedures in place for states to obtain from the FCC Form 477 information previously submitted to that agency, there is no bar to states obtaining this information directly from carriers.²⁷ Indeed, this Commission regularly requests and receives Form 477 data directly from the carriers,²⁸ partly in response to state statute.²⁹ The Commission has stated that it “possesses its own authority, not hampered by

²⁵ AT&T December 22, 2015 Motion at 12 (“Form 477 data ... contain detailed subscriber information, regarding active connections, by location, service type (i.e., commercial or residential), speed, and facility type (e.g., wireless, coax , fiber). The data are extremely granular, down to the census block in some cases”).

²⁶ Motion at 12 (“any attempt to compel production of the Form 477 data outside of the FCC’s specified process conflicts with federal law and is therefore preempted”).

²⁷ The FCC decision cited by AT&T does not in any way preempt or preclude states from obtaining Form 477 information directly from the carriers, and indeed talks about how useful the standardized information will be to both state and federal competition review. *In re Local Competition and Broadband Reporting*, FCC 00-114, 15 FCC Rcd 7717, at ¶¶ 2 and 7 (“Reporting Order”).

²⁸ See <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/Broadband+Mapping/> (“we ask California broadband providers to submit a copy of their FCC 477 data to us by April 1st of each year”).

²⁹ Pub. Util. Code § 5960(b) (DIVCA).

parties' NDAs or limitations imposed by other Commissions, to require the production of [such] documents." ³⁰

The FCC does show concern about the competitive sensitivity of this information, and requires states to have protections equivalent to those which attend to FOIA requests, i.e., exceptions to the state Public Records Act that protect competitively sensitive data.³¹ This Commission has such protections in place, through Pub. Util. Code § 583, and G.O. 66C, which protect sensitive business data from PRA/FOIA disclosure. Carriers regularly submit Form 477 data to the Communications Division under § 583.

As to the requirement that the carriers provide some of the Form 477 data on a more granular, i.e., census block, basis, we agree with TURN when it states that the

Commission should have the most granular data available or readily created to analyze state-wide levels of competition. Reliance on high-level reporting risks over-estimating available competition where deployment has been uneven or [in] areas where redlining may have occurred... TURN understands through its own data analysis that census block level data are available to address some of the issues in I.Rs 5-7. The carriers should clarify their difficulties in providing this data and work with the Commission to tailor these requests.³²

³⁰ D.15-07-037 (Comcast/Time Warner merger application final decision), Slip Op. at 11-12, requiring the preservation of documents that applicants claimed were subject to FCC protective order. The merger applicants objected that this information, which included 477 data, was governed by federal law.

³¹ *Reporting Order*, at ¶ 95 ("where state laws afford less protection than federal FOIA laws, the higher federal standard will prevail").

³² *Id.* at 2-3.

Staff is aware that readily available software tools, including from the United States Census Bureau, allow conversion of data from an address-level of granularity to a census block-level of granularity. In recognition, however, that the further analysis may require more time, we will not require that the information responsive to the subparts of Requests 5-7 be produced until the time set for the Final Responses.

e. Submission of Data on Excel Spreadsheets, Technical Questions

For Requests 2(a) and (b), 3(a) and (b), 5-7 subsections, 8, 14(a)-(d), and 17-19, Commission staff provide a Microsoft Excel template for submission of the data to the Commission, which responding parties are required to use (found as **Attachment 2** to this Ruling). Parties should provide their data responses to these questions in electronic form as Microsoft Excel files.

f. Clarification of Individual Information Requests

On December 9, 2015, the undersigned Administrative Law Judge issued a ruling which solicited comments on OII Information Requests claimed to be unclear, vague, or ambiguous. Found as **Attachment 1** to this Ruling are clarifications, based on filed comments and questions raised at the PHC by the parties, specific to individual Requests. Unless stated otherwise, and where material, the “as of” date applicable to these Requests is December 31, 2015.

C. Conclusion

Except to the extent stated above, and except for the request regarding categorization, all pending motions are denied.

IT IS SO RULED.

Dated February 4, 2016, at San Francisco, California.

/s/ DOROTHY DUDA for
Karl Bemesderfer
Administrative Law Judge

ATTACHMENT 1 – Clarification of Information Requests

Appendix A Reports

1. Please comment on the relative accuracy, completeness, and relevance of the reports listed in Appendix A above, with particular attention to the most recent (2014-15) reports issued by the Commission's Communications Division and by the Federal Communications Commission. To what extent are they useful in determining whether adequate competition exists in the California telecommunications market today, or in any part of it?

Clarification: It is not mandatory that responses to this information request analyze each of the listed reports, but parties are encouraged to identify reports that they believe to be useful to the competition analysis within the scope of this proceeding (see Ordering Paragraph 1), and to identify any reports of which official notice should not be taken, particularly with regard to the most recent reports of the FCC and Communications Division, and to state specific reasons for such objection to official notice. Response to this Information Request is not due until the date for Supplemental Responses.

Basic Service, Other Voice Services

2. Respondents providing Basic Service in California: please identify all counties within the State in which you offer voice service, whether stand-alone residential Basic Service or other voice options.³³
 - a. URF ILEC/Respondents and their affiliates: please state how many total residential (consumer) voice customers you serve in California, either directly or through VoIP, wireless, and/or other affiliates, in each of these four categories: Basic Service; other TDM wireline; VoIP; and wireless. Please state such customer numbers both in terms of households or billing addresses, and in

³³ As used herein, Basic Service means the service specified in in D.12-12-038, while "consumer voice service" or "basic service" or other lower case equivalents refer to any telephone service, even if they do not meet all the specifications of D.12-12-038.

terms of lines or total numbers assigned to voice service. What percentage of the voice customers in each of these categories obtain their voice telephone service in a bundle with broadband Internet access service (BIAS)?

- b. URF ILEC/Respondents: please state how many total business customers you serve in California, either directly or through VoIP, wireless, and/or other affiliates, in each of these three categories: TDM wireline; VoIP; and wireless. Please state such customer numbers both in terms of billing addresses, and in terms of lines or total numbers assigned to voice service. What percentage of the voice customers in each of these categories obtain their voice telephone service in a bundle with broadband Internet access service?

Clarification: As used in Request 2, "Respondents" means the URF ILEC Respondents, and their wireless and VoIP affiliates, as set forth in OII Ordering Paragraph 3 (AT&T California; Verizon California Inc;³⁴ Frontier Communications; Consolidated Communications of California Company (formerly known as Sure West Telephone) ; Citizens Telecommunications Co. of California). The URF ILECs may respond on behalf of their affiliates, rather than provide separate responses from each entity.

The "as of" date for these responses – and all responses herein, unless stated otherwise -- shall be December 31, 2015 (e.g., total residential and business lines/subscriptions as of December 31, 2015).

As used herein: Basic Service means the service described in D.12-12-038; "other TDM wireline" means all other non-VoIP wireline service. As used herein, "voice customers" shall be measured primarily by "Lines or total numbers assigned to voice service," shall be referred to as "lines" throughout the attached data templates, and shall encompass the following: (1) for Basic Service and other TDM wireline, the number of voice-grade equivalent lines and voice-grade equivalent wireless channels; (2) for VoIP, the number of VoIP subscriptions with unique phone numbers able to place and receive calls to or from the public

³⁴ We expect Verizon California Inc to fully respond to this Information Request as its transaction with Frontier reportedly will not close until or around March, 2016.

switched telephone network; and (3) for wireless, the number of mobile voice subscriptions with a unique phone number and that can place and receive calls to or from the public switched telephone network. As with the FCC's requirements for the Form 477, include all subscribers that you (including affiliates) bill directly (including through agents), and prepaid subscribers.³⁵

As used throughout, "affiliate" shall have the same meaning that it does in 47 U.S.C. § 153(1).

As used herein, "business" service includes service to businesses, institutions, and government entities. Hybrid TDM-VoIP service shall be characterized by the primary technology used in the last-mile connection most proximate to the end-user. The "as of" date for these responses – and, unless stated otherwise, all responses herein -- shall be December 31, 2015 (e.g., total business lines as of December 31, 2015).

3. All other Respondents and competing carriers providing any form of consumer or business voice service in California, please identify all counties within the state where you offer such services.
 - a. Please state how many total residential (consumer) customers you serve in California, either directly or through VoIP, wireless, and/or other affiliates, in each of these three categories: TDM wireline; VoIP; and wireless. Please state such customer numbers both in terms of households or billing addresses, and in terms of total numbers assigned to voice service. What percentage of your current voice customers obtain their voice telephone service in a bundle with broadband Internet access service (BIAS)?
 - b. Please state how many total business customers you serve in California, either directly or through VoIP, wireless, and/or other affiliates, in each of these three categories: TDM wireline; VoIP; and wireless. Please state such customer numbers both in terms

³⁵ The requirement to express total customer numbers by "households or business addresses" is made optional; responding parties may, however, add a data line or lines setting forth total "households or business addresses" if they wish to provide additional information.

of billing address, and in terms of lines or total numbers assigned to voice service. What percentage of the voice customers in each of these categories obtain their voice telephone service in a bundle with broadband Internet access service?

Clarification: As used in Request 3, "all other Respondents and competing carriers" means all carriers not included in the scope of Request 2 above, i.e., all carriers not affiliated with an URF ILEC, including CLECs, interexchange carriers, cable operators, wireless providers, as well as the affiliates of those companies. This includes the cable phone affiliates (Comcast, Time Warner, Cox, and Charter) as well as wireless carriers listed in Ordering Paragraph 3. The definitional clarifications set forth with regard to Information Request 2 above apply here. Competitive carriers may respond on behalf of their affiliates rather than produce separate responses from each entity. Staff will prepare a similar data request for large competing carriers not named as Respondents. Staff will prepare a similar data request for large competing carriers not named as Respondents.

General Basic Service Questions

4. In more general terms, please break out existing mass market options for basic phone service in California – whether or not such phone service is sold as part of a bundle including broadband -- and analyze changes in the availability and price of such service since the expiration of rate caps on January 1, 2011.

Voice and Broadband, Fixed and Mobile

5. All Respondent voice providers that file Form 477 reports with the FCC are directed to provide to the Commission a copy of all such reports filed during the last year. In addition, Respondent voice providers are required to provide this information, and the following additional information, on the template attached hereto as Appendix B.1:
 - a. Census Block (breaking out the Census Tract information already provided)
 - b. To the extent that Respondent entities provide voice service over their own facilities, please provide the total number of households passed with access to voice services

(VGE³⁶ or VoIP) (e.g., and hereafter, households able to subscribe to such services); and

- c. To the extent that Respondent entities provide voice service over their own facilities, please provide the total number of businesses passed with access to voice services (VGE or VoIP) (e.g., and hereafter, businesses able to subscribe to such services).

Clarification: the Form 477 data should be provided on the date for Initial Response. The additional data requested in subparts (a)-(c) – total residential and business subscribers, homes passed, and businesses passed by census block -- should be produced on or before the date for Final Responses.

Clarification: as used herein, “your own facilities” includes facilities that you own or for which you have obtained an indefeasible right of use (IRU).

6. All California broadband provider Respondents that file Form 477 fixed broadband deployment and subscription data with the FCC, and all Respondents with broadband affiliates that file such data, are ordered to provide to the Commission a copy of all such reports filed with the FCC during the last year. In addition, such broadband providers are ordered to provide the 477 data, and the following additional information, on the template attached hereto as Appendix B.2:
 - a. To the extent that the Respondent entities provide broadband access service over their own facilities, please provide the total number of households passed;
 - b. Total number of households subscribed (by census block);
 - c. To the extent that Respondent entities provide broadband access service over their own facilities, please provide the total number of businesses passed;

³⁶ Voice Grade Equivalent. See FCC instructions for Form 477 filers, at <https://transition.fcc.gov/form477/477inst.pdf>.

- d. Total number of businesses subscribed to broadband access service; and
- e. Distribution of customers by speed tier, as shown in Appendix B.2.

Clarification: the Form 477 data should be provided on the date for Initial Response. The additional data requested in subparts (a)-(e) – should be produced on or before the date for Final Responses.

- 7. All Respondents offering mobile voice and/or broadband services in California, or whose affiliates are offering such service, are ordered to provide to the Commission a copy of all mobile voice deployment data, mobile broadband service availability data, mobile broadband deployment data, and mobile broadband subscription data filed with the FCC during the last year. In addition, such mobile providers are ordered to provide the 477 data, and the following additional data elements as of the date of your last Form 477 filing (with subscription and deployment data), as shown more fully on the attached spreadsheet template (Attachment B.3):
 - a. Census Block (breaking out the Census Tract information already provided);
 - b. Number of Subscribers;
 - c. Actual [average] speeds offered;³⁷ and
 - d. The numbers of subscribers by speed tier.

Clarification: the Form 477 data should be provided on the date for Initial Response. The additional data requested in subparts (a)-(d) – should be produced on or before the date for Final Responses.

Price

- 8. URF Carriers: In a spreadsheet format, please list your tariffed Basic Service voice products/services, and all tariffed Basic Service elements, and track the price for such product or element over the last five years (as of December 31, 2010, as of December 31, 2011, as

³⁷ See Fixed Broadband Consumer Disclosure Instructions, at https://apps.fcc.gov/edocs_public/index.do?document=336142.

of December 31, 2012, as of December 31, 2013, and as of December 31, 2014).

Clarification: see Attachment 2 for template.

Market Definition

9. Please describe the extent to which wireless and wireline services are substitutes for one another, or separate markets, based on your experience and on such evidence and documentation that you can supply.
 - a. Are there barriers to such substitution, and what are the limits of such substitution?
10. How and to what extent do competition and consumer choices vary by geographic market in California?
11. How and to what extent is competition in the business market different from that in the residential market?
12. How much competition is there for advanced telecommunications services at the new national standard of 25 Mbps down (and 3 Mbps up)?

Wholesale Inputs

13. How and to what extent are current “intermodal” competitors, i.e., VoIP, cable and wireless companies, dependent on wholesale inputs from incumbent carriers or their affiliates? How should we measure such dependencies? How may such dependencies be attenuated? Need they be attenuated?
14. Do competing carriers have sufficient access to wholesale inputs (last mile loops, transit, special access, interconnection, pole attachment, duct access, and other) to sustain robust retail competition? If not, why not?
 - a. All responding CLECs (and other competitive carriers that provide voice or broadband service to end-user customers): of the total customer numbers you reported in response to Information Request 3 above, please report the total customers (and line counts) you provision over ILEC last-mile facilities, breaking out such totals into categories for resold UNE-P (or its equivalent, e.g., UNE-P replacement per commercial agreement), UNE-L (copper

loops at the DSO, DS1, and DS3 levels), special access, or other last-mile access. Please also distinguish between business and residential/ consumer (if any) customers and lines.

Clarification: As used herein, "competitive" and "competing" carriers means and includes the following: CLECs, interexchange carriers, cable operators, wireless providers or any other provider that is not an incumbent LEC operating within its incumbent service territory. See FCC 12-153, at ¶ 21 and Appendix A. This includes the cable phone affiliates (Comcast, Time Warner, Cox, and Charter) as well as wireless carriers listed in Ordering Paragraph 3. To the extent that other large competing carriers not named as Respondents do not respond voluntarily, staff will issue Data Requests.

As used in Request 14 and 15, last-mile facilities and last-mile access mean wholesale inputs provisioned or self-provisioned by ILECs and their affiliates, by unaffiliated competing carriers, or self-provisioned by the responding competing carrier. Such last-mile facilities include Total Services Resale(TSR), Unbundled Network Element (UNE) loops, special access circuits, resold UNE-P, other commercial wholesale platform services (such as Local Wholesale Complete and Wholesale Advantage), and other commercially available wholesale inputs (e.g., Ethernet circuits). resold UNE-P (or its equivalent, e.g., UNE-P replacement per commercial agreement), UNE-L (copper loops at the DSO, DS1, and DS3 levels), special access, or other last-mile access. Parties may specify and distinguish among types of last-mile access, but they are not required to do so. See staff data template.

- b. All responding CLECs (and other competing carriers): of the total customer numbers you reported in response to Information Request 3 above, please report the total customers (and line counts) you provision over your own facilities.

Clarification: as used herein, "your own facilities" includes facilities that you own or for which you have obtained an indefeasible right of use or the equivalent. See also clarifications to 14(a), which are incorporated herein.

- c. All ILEC Respondents: please report the total access lines and other last-mile facilities which you provide to competitive carriers in California, breaking out such totals into categories for resale, loop-and-port combination (UNE-P, UNE-P replacement), UNE loop, special access lines, or other last-mile facilities).

Clarification: see clarification for 14(a), above, it is incorporated here, as well.

- d. All ILEC Respondents: please report the total number of access lines and other last mile facilities provided by the ILEC or any of its affiliate to the ILEC or any of its affiliates.

Clarification: the clarifications to 14(a) and (b) and incorporated here to the extent they apply to 14(c) and (d). Please see staff data template.

- e. Do Parties have evidence of what they contend is an abuse of market power? Have competing carriers been refused service or interconnection? Have carriers or service providers been forced to sign agreements that remove arbitration/mediation options under sections 251 and 252 of Title 47?
15. What segments of the wholesale market are (or are not) competitive: local loops (including copper, hybrid, fiber, and coaxial, DS1, DS3 and dark fiber loops);³⁸ subloops; dedicated access or transport, other forms of access, transport or middle-mile lines including special access;³⁹ and/or other network elements necessary for market entry and competition?
- a. Expressed differently, and as to last-mile facilities specifically, what last-mile facilities and alternatives are available to competitive carriers, and at what prices?
16. Will competitive carriers have adequate access to such network elements after the network is fully transitioned to IP-enabled technologies? If not, why not?

³⁸ Compare 47 C.F.R. §51.319 (unbundled network elements).

³⁹ See OII footnotes 37-38.

17. Respondents: please provide the total number of special access or other transport facilities which you or your affiliates provide to wireless carriers for backhaul from cell or antenna sites to upstream network nodes (e.g., mobile telephone switching offices). Please distinguish between facilities provided to unaffiliated carriers and facilities provided to your affiliate wireless provider(s).

Clarification: as used in Request 17, Respondents means the ILECs, the cable-affiliated CLECs, and other non-wireless carriers responding to this Request, that provide backhaul to wireless carriers. (Wireless carriers – respond to Request 18.)

18. Respondent wireless carriers: please provide the total number of antenna or cell sites which you operate in California, and identify the top ten providers of backhaul services to these antenna or cell sites, and the number of antenna or cell sites serviced by each backhaul operator.

Clarification: as used in Request 18, Respondent wireless carriers means the wireless carriers identified in OII O.P. 3, and other wireless carriers responding to this Information Request. In listing “the top ten providers of backhaul services” to a carrier, that carrier should include its own affiliates. As used herein, backhaul includes all forms of DSL lines, Ethernet, fiber, microwave or other connection from the cell site to the next upstream mobile switching telephone office, central office, or node.

19. Respondent wireless carriers: please identify the radio frequency (RF) spectrum which you own or control in the major statistical areas (MSAs) in California. Please identify what portion of that frequency is currently in use.

Clarification: Responding carriers may respond by referring to the list of California carriers and the spectrum they control, at the FCC Spectrum Dashboard, at <http://reboot.fcc.gov/spectrumdashboard/searchMap.seam>, and confirm that the Spectrum Dashboard contains all spectrum owned or controlled by the responding carrier in California, while identifying any listed entities other than the carrier’s commonly known business names through which the carrier has substantial ownership (more than 10%) or control over the listed spectrum. If the list is incomplete as to the carrier’s spectrum holdings, the carrier should supplement. Additionally, the carrier should indicate which spectrum blocks it is currently using to provide services to 10 or more end-user customers.” See Attachment 2 template.

Information found on the Spectrum Dashboard or in other publicly available sources is not confidential information.

- a. To what extent does the availability of radio frequency (RF) spectrum as a last-mile technology affect wireless carriers' ability to compete with wireline carriers?
- b. In answering this question, parties may also discuss the relative competitiveness of business models using licensed and unlicensed spectrum, the place of satellite transmission in the telecommunications market, and the use of white spaces.

Metrics

20. Identify the metrics and sources of data that you believe would be most useful and useable by the Commission to measure competition in both the retail and wholesale markets, whether identified in Appendix A or found elsewhere.
21. How should the Commission determine whether the prices of telephone services are just and reasonable? Parties should identify the specific factors or metrics they propose the Commission use to determine whether prices are just and reasonable.
22. What information does the Commission need to collect going forward, in order to timely monitor whether (a) the telecommunications market is operating efficiently, and (b) the rates for telephone services are just and reasonable? How should the Commission collect and use that information, and report on it to the Legislature and ratepayers? Please provide specific data and analysis to support your conclusion.
23. If you have identified any market failures, inefficiencies or bottlenecks in your answers to the questions above, please suggest rules, regulations or policies that would ameliorate those market problems.
 - a. What initiatives can this Commission take to enhance competition within California, and what measures are uniquely within the province and jurisdiction of federal regulatory authorities?

(END OF ATTACHMENT 1)

ATTACHMENT 2

**Data Response Template for
Information Requests 2, 3, 8, 14(a)-(d), and 17-19**

[illegible]

[illegible]

Requests 14(a) & (b) re competing carrier use of ILEC wholesale inputs	Legal name and U#	Total number of residential wireline/VoIP customers served through last-mile facilities/last- mile access provided by ILECs	Total number of residential wireline/VoIP customers served through last-mile facilities/last- mile access provided by your own facilities or your affiliates'	Total number of residential wireline/VoIP customers served through last-mile facilities/last-mile access provided by non- ILEC competing carriers	Total number of business wireline/VoIP customers served through last-mile facilities/last-mile access provided by your own facilities or your affiliates' facilities	Total number of business wireline/VoIP customers served through last-mile facilities/last-mile access provided by non- ILEC competing carriers
Named Respondent						
Affiliate #1						
Affiliate #2						
Add affiliates as necessary						

Requests 14(c) & (d) - ILEC provision of wholesale inputs	Legal name and U#	Total number of last-mile facilities and last-mile access you provide to competitive carriers	Total number of last-mile facilities and last-mile access you provide to yourself or any of your affiliates by your own facilities or your affiliates' facilities
Named Respondent			
Affiliate #1			
Affiliate #2			
Add affiliates as necessary			

Request 17 - Respondents' and their affiliates' provision of cell-site backhaul to competing wireless carriers, and self-provisioning/provisioning to affiliates	Name and U# of responding carrier	Total cell sites for which responding carrier provides special access or other forms of wireline backhaul to wireless carriers not affiliated with responding carrier or affiliated with an ILEC (# of cell sites)	Total cell sites for which responding carrier provides special access or other forms of wireline backhaul to a wireless carrier that is not affiliated with the respondent, but which wireless carrier <u>is</u> affiliated with any ILEC (# of cell sites)	Total cell sites for which the responding carrier provides special access or other forms of wireline backhaul to a wireless carrier affiliated with the respondent (# of cell sites)
Respondent				
Affiliate #1				
Affiliate #2				
Add affiliates as appropriate				

Request 18 - Respondent wireless carriers Cell sites and use of backhaul	Responding wireless carrier (legal name and WIR/U#)	Total cell sites in CA	Number of cell sites provisioned by backhaul provider	Name of backhaul provider
Respondent (for name & total cell sites)				N/A
#1 backhaul provider	N/A	N/A		
#2 backhaul provider	N/A	N/A		
#3 backhaul provider	N/A	N/A		
#4 backhaul provider	N/A	N/A		
#5 backhaul provider	N/A	N/A		
#6 backhaul provider	N/A	N/A		
#7 backhaul provider	N/A	N/A		
#8 backhaul provider	N/A	N/A		
#9 backhaul provider	N/A	N/A		
#10 backhaul provider	N/A	N/A		

Request 19 (preface) - Spectrum (California Spectrum as shown on FCC Spectrum Dashboard)	Name and WIR/U# of Responding wireless carrier, or Licensee/Designated Owner as applicable	Common Name (as term is used on the FCC Spectrum Dashboard)	Spectrum range (Frequency Band, as shown on FCC Spectrum Dashboard)	MSA/Market (as shown on Spectrum Dashboard)	As of December 31, 2015, was this spectrum (frequency band) used to provide services to 10 or more end- user customers? (Y/N)	Is the information here the same as currently shown on FCC's Spectrum Dashboard? (Y/N)
Respondent		N/A	N/A	N/A	N/A	
Spectrum Block #1						
Spectrum Block #2						
Spectrum Block #3						
Spectrum Block #4						
Add Spectrum Blocks as appropriate						

(END OF ATTACHMENT 2)